



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

Summary

Nonconforming Structure Regulation Recommendations & Options From March and May, 2003 Advisory Committee Meetings

This document summarizes changes to the initial option packages made by Advisory Committee members and identifies committee member preferences and recommendations. More detailed information on the meetings is available at: <http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm>

-
1. Modifications to Nonconforming Structures Located in the Primary Buffer
 2. Modifications to Nonconforming Structures Located in the Secondary Buffer
 3. Options for Structures That Straddle Setback Lines
 4. Definitions

1. MODIFICATIONS TO NONCONFORMING STRUCTURES LOCATED IN THE PRIMARY BUFFER (that area which lies between the ordinary high water mark and the secondary buffer)

Guiding Principles for Regulation of Structures Located Entirely Within Primary Buffer Zone

- No expansion on any structures in the primary buffer
- Ordinary maintenance or repair that does not require a permit, does not require mitigation; any repair or modification that requires a permit, requires mitigation measures
- Pre-existing structures will continue to exist until the owner decides to undertake major reconstruction or replacement; at that point, relocation to a compliant location would be required
- A mitigation end point will be defined incorporating credits for good stewardship

Regulations to Implement Guiding Principles

For principal and accessory structures located entirely in the primary buffer, the Department recommends that the following provisions apply:

- Unlimited ordinary maintenance and repairs are allowed, including the repair or replacement of existing structural components; as long as the work does not constitute major reconstruction
- Replacement structures must be built in a compliant location
- Major reconstruction is not allowed unless a variance is granted or the structure is moved to a compliant location
- Structures may not be expanded
- An area 15-feet wide around the structure may be maintained in lawn
- The primary buffer must be preserved or restored if a permit is required for work on an existing structure
- In addition to preserving or restoring the primary buffer, the property owner must also implement and maintain any required mitigation practices

Advisory Committee Recommendations

- Explore two mitigation systems
 1. System that requires mitigation practices be roughly proportional to proposed project
 2. System that allows zoning administrators to determine mitigation plan requirements based on site characteristics and proposed project

2. MODIFICATIONS TO NONCONFORMING STRUCTURES LOCATED IN THE SECONDARY BUFFER (that area which extends from the primary buffer to the minimum setback line)

Guiding Principles for Regulation of Structures Located Entirely Within Secondary Buffer Zone

- Allow limited expansion of principal structures located in the secondary buffer
- Ordinary maintenance and repair that does not require a permit, does not require mitigation; any repair, modification or expansion that requires a permit, requires mitigation measures
- Pre-existing structures will continue to exist until the owner decides to undertake major reconstruction or replacement; at that point, relocation to a compliant location would be required
- A mitigation end point will be defined incorporating credits for good stewardship

Regulations to Implement Guiding Principles

For principal and accessory structures located in the secondary buffer, the Department recommends that the following provisions apply:

- Unlimited ordinary maintenance and repairs are allowed; including the repair or replacement of existing structural components; as long as the work does not constitute major reconstruction
- Replacement structures must be built in a compliant location
- Major reconstruction is not allowed unless a variance is granted or the structure is moved to a compliant location
- Limited expansion for principal structures would be allowed if conditions are satisfied [see options below]
- Pre-existing structures will continue to exist until the owner decides to undertake major reconstruction or to expand beyond the limited expansion allowed in the secondary buffer
- The primary buffer must be preserved or restored if a permit is required for work on an existing structure
- In addition to preserving or restoring the primary buffer, the property owner must also implement and maintain any required mitigation practices
- Accessory structures may not be expanded

Advisory Committee Recommendations

- Explore two mitigation systems
 1. System that requires mitigation practices be roughly proportional to proposed project
 2. System that allows zoning administrators to determine mitigation plan requirements based on site characteristics and proposed project

Limited Expansion Options for Principal Structures

Expansion limits would be applied as:

Advisory Committee Preferences	Option
4 members	A. No expansion allowed
0	B. One-time expansion allowed to a cap on square footage
15 members	C. Multiple expansions allowed to a cap on square footage

To qualify for limited expansion, the existing principal structure must be a minimum of:

Advisory Committee Preferences	Option
9 members	A. No minimum size requirement
2 members	B. 500 square feet
0	C. 600 square feet
0	D. 750 square feet
7 members	E. County's current minimum house size or if none exists, 750 square feet

For a one-time limited expansion, the existing principal structure may not be expanded beyond:

Advisory Committee Preferences	Option
4 members	A. No expansion allowed
2 members	B. Habitable living area not to exceed 1,500 square feet
5 members	C. 50% of existing footprint, not to exceed 1,900 square feet and habitable living area not to exceed 2,500 square feet
7 members	D. Limits established by county*

*This option may not meet the statutory requirement for the DNR to provide minimum standards to counties

For a one-time limited expansion, the existing principal structure may be expanded according to the following provisions:

Advisory Committee Preferences	Option
0	A. Landward of the existing structure
0	B. Parallel to, the existing structure
0	C. A second story addition to the existing structure instead of a horizontal expansion
18 members	D. Location of expansion is based on site characteristics and determined by county to be consistent with purposes of rule

3. OPTIONS FOR STRUCTURES THAT STRADDLE SETBACK LINES

Advisory Committee Preferences	Option
1 member	A. These structures are treated like structures entirely within the most restrictive buffer area.
0	B. Limited expansion on landward side of structures that are partially located within the primary buffer will be allowed only if secondary buffer expansion limits are satisfied and there is no complying location on the property for an enlarged structure
17 members	C. The regulations for the zone where the proposed modification is located will prevail including mitigation requirements regardless of where the expansion is located.

4. DEFINITIONS

Suggested Definitions to Implement Guiding Principles

Structure means:

Advisory Committee Preferences	Option
13 members	A. Any man made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed either upon the ground, river bed, stream bed or lakebed. [modification of NR116.03(45)]
6 members	B. Any man made object with form, shape and independent utility that is constructed or otherwise erected or attached to or permanently placed upon the ground above the ordinary high water mark. For the purposes of this chapter, the term “structure” does not include: vegetation including landscaping and gardens; earthwork including grading, filling, berms, terraces and retaining walls; stormwater management devices; and erosion control devices. [Kent proposal]

Structural Components means:

Advisory Committee Preferences	Option
5 members	A. Supporting elements of a structure such as wall studs, columns, rafters, joists, beams, concrete blocks, poured concrete, etc., regardless of their cost. [Mitchell proposal]
14 members	B. Supporting elements of a structure. Supporting elements include, but is not limited to, wall studs, rafters, joists, posts, columns, beams, and girders. [AC proposal]
2 members	C. None of the options

Major Reconstruction means:

Advisory Committee Preferences	Option
11 members	A. Reconstruction or replacement of 50% or more of the structural components of a building or 50% or more of the linear perimeter of the structure, whichever is less [AC proposal]
10 members	B. The removal and replacement within the existing footprint of all components of a structure with the exception of the foundation. [Larson proposal]

Ordinary Maintenance and Repair means:

Advisory Committee Preferences	Option
1 member	A. Work that is necessary to maintain or restore a building for its existing use, including the reconstruction or replacement of deteriorated structural components as long as the work does not constitute "major reconstruction." Ordinary maintenance and repair includes such things as painting and staining; repair or replacement of siding, windows, sky lights, doors, vents, insulation, shutters, gutters, flooring, shingles and other roofing materials; replacement or upgrading of plumbing, heating or electrical components, and other internal improvements within the building envelope that don't involve alteration or replacement of structural components. [DNR staff proposal]
1 member	B. Physical activities, including but not limited to painting, caulking and structure element replacement, undertaken to protect and preserve a structure. [Deschane proposal]
1 member	C. Actions necessary to continue or restore the safe use of a structure which has been damaged or has deteriorated through the natural aging and wear and which does not result in major reconstruction, replacement or a significant increase in value. Such actions may include, but are not limited to painting and staining, repair of exterior windows, sky lights, doors, vents, siding, insulation, shutters, gutters, flooring, shingles, roofing materials, the repair of walls, or the foundation, and internal improvements within the structural envelope without doing a structural alteration. [based on Bayfield County Ordinance definition]
18 members	D. Anything less than major reconstruction. [Mitchell proposal]

Mitigation means:

Advisory Committee Preferences	Option
21 members	A. Actions taken to minimize the adverse impact of development [AC proposal]

Permit means:

Advisory Committee Preferences	Option
21 members	A. A document that is part of a system that authorizes new construction, development, reconstruction, structural alteration or moving of buildings and structures [AC proposal based on NR115.05(6)(c)]

Habitable Living Area means:

Advisory Committee Preferences	Option
21 members	A. The floor area of those portions of a building that can be used for human habitation, regardless of whether or not the area is actually used for human habitation at a particular time. The term "habitable living area" does not including garages, but it may include basement areas that are suitable for use as living space. [DNR staff proposal]

Footprint means:

Advisory Committee Preferences	Option
21 members	A. That portion of a lot covered by a building or structure at the surface level, measured on a horizontal plane. [Bayfield County Ordinance definition]

If you would like your comments to be part of the public record for the NR115 rule revision, please provide the following information. Please print legibly.

Date: _____

Name: _____

Address: _____

Phone: _____

Email: _____

Would you like to receive email updates about the NR 115 revision process? ☐ Yes ☐ No

Additional Comments: